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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1152

SOUTHERN PACIFIC COMPANY, a Delaware Corporation,
Appellant,

vs.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA; PETER E. MITCHELL, WILLIAM M. BENNETT, A. W. GATOV, WILLIAM SYMONS, JR., and FRED P. MORRISSEY, as members of, and constituting said Commission; THOMAS C. LYNCH; JOHN J. FERDON; KEITH C. SORENSON; and LOUIS K. BERGNA,
Appellees.

On Appeal from the United States District Court for the Northern District of California

Jurisdictional Statement of Appellant Southern Pacific Company

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SOUTHERN PACIFIC COMPANY, a Delaware Corporation,
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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA; PETER E. MITCHELL, WILLIAM M. BENNETT, A. W. GATOV, WILLIAM SYMONS, JR., and FRED P. MORRISSEY, as members of, and constituting said Commission; THOMAS C. LYNCH; JOHN J. FERDON; KEITH C. SORENSON; and LOUIS K. BERGNA,
Appellees.

On Appeal from the United States District Court for the Northern District of California

Jurisdictional Statement of Appellant Southern Pacific Company

Appellant, pursuant to United States Supreme Court Rules 13(2) and 15, files this statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the

final order of the district court dismissing appellant's complaint, and should exercise such jurisdiction in this case.

OPINIONS BELOW

The unreported opinion and order of the Public Utilities Commission of the State of California (herein sometimes referred to as the "Commission") in Decision No. 74006 are dated April 16, 1968, and copies thereof are attached hereto as Appendix A. The unreported final order of the United States District Court, Northern District of California in No. 50166, entered November 18, 1968, here sought to be reviewed, which granted appellee's motion to dismiss appellant's complaint to enjoin the above Commission order and denied appellant's motion for a preliminary injunction, is attached hereto as Appendix B. The district court delivered no written opinion. The related final order of the Supreme Court of California in No. 22610 of September 25, 1968, which denied appellant's petition for a writ of review to review the same Commission order, is reported in the Advance California Reports, 69 A.C. No. 9, No. 1 of the Minutes, and a copy thereof is attached as Appendix C hereto. A companion appeal by appellant to this Court from that order of the California Supreme Court is also pending, which is also entitled *Southern Pacific Company v. The Public Utilities Commission of the State of California,* and was docketed as No. 1050 on February 17, 1969.

JURISDICTION

The appeal herein is from a final order entered by a three-judge United States District Court for the Northern District of California specially constituted under 28 U.S.C. §§ 2281 and 2284. In its complaint in this case appellant sought to enjoin the Commission's order imposing a con-

tempt fine upon appellant on the two-fold grounds that the California consfitutional and statutory provisions authorizing the Commission to punish for contempt and without a jury violated its rights under the federal constitution and that various aspects of the Commission's conduct in the contempt proceedings violated appellant's rights to a fair hearing under the fourteenth amendment to the federal constitution. In the involved final order the court granted appellee's motion to dismiss and denied appellant's motion for a preliminary injunction, but did not indicate the grounds for its action.

The final order appealed from was entered on November 18, 1968. Notice of appeal was filed in the United States District Court for the Northern District of California on January 14, 1969.

The Supreme Court of the United States has jurisdiction to review by direct appeal the order complained of by the provisions of 28 U.S.C. §§ 1253 and 2101 (b)

The following decisions are believed to sustain the jurisdiction of the Supreme Court to review the order on direct appeal in this case: *Herkness v. Irion,* 278 U.S. 92 (1928); *Florida Lime Growers v. Jacobsen,* 362 U.S. 73 (1960).

The California statutes involved in this appeal are §§ 1756 - 1760, California Public Utilities Code, which prescribe the method and scope of judicial review of Commission orders by the California Supreme Court, and read as follows:

§ 1756. Writ of certiorari

Within 30 days after the application for a rehearing is denied, or, if the application is granted, then within 30 days after the decision on rehearing, the applicant may apply to the Supreme Court of this State for a writ of certiorari or review for the purpose of having

the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined. The writ shall be made returnable * * * *at a time and place then or thereafter specified by court order* and shall direct the commission to certify its record in the case to the court *within the time therein specified.*

§ 1757. Scope of review

No new or additional evidence may be introduced in the Supreme Court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of this State. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review except as provided in this article. Such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination.

§ 1758. Appearances; judgment; applicability of Code of Civil Procedure

The commission and each party to the action or proceeding before the commission may appear in the review proceeding. Upon the hearing the Supreme Court shall enter judgment either affirming or setting aside the order or decision of the commission. The provisions of the Code of Civil Procedure relating to writs of review shall, so far as applicable and not in conflict with the provisions of this part, apply to proceedings instituted in the Supreme Court under the provisions of this article.

§ 1759. Jurisdiction

No court of this State, except the Supreme Court to the extent specified in this article, shall have jurisdic-

tion to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, except that the writ of mandamus shall lie from the Supreme Court to the commission in all proper cases.

§ 1760. Constitutional questions

In any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the Constitution of the United States, the Supreme Court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the constitutional question shall not be final.

QUESTIONS PRESENTED

Prior to filing the complaint in the federal district court in the instant case appellant filed a petition with the California Supreme Court seeking judicial review by that court, pursuant to the foregoing statutory writ of review procedure, of the Commission's order imposing a contempt fine upon appellant. Substantially the same two-fold types of contentions were raised in this petition to the California Supreme Court as were raised in the instant proceedings before the federal district court, namely: (1) that the giving to the Commission of the power to punish for contempt and without a jury trial violated appellant's federal constitutional rights;[1] and (2) that in various respects the contempt proceedings before the Commission deprived appellant of a fair hearing and procedural due process under the four-

1. Appellant is seeking to secure judicial review of the first type of issues in its pending companion appeal (No. 1050) from the California Supreme Court's decision.

teenth amendment to the federal constitution. The California Supreme Court summarily denied the writ of review without bringing up the record of the Commission in its contempt proceedings for review by the Court. Believing that judicial consideration of such record or of evidence outside the record was necessary for a proper review of its procedural due process contentions, appellant filed this suit in the federal district court, raising both types of issues. In its order sought to be reviewed the district court merely granted appellee's motion to dismiss and denied appellant's motion for a preliminary injunction, but without opinion or any indication of the grounds of its decision. The principal questions presented are:

(1) Whether the California Supreme Court's action in summarily dismissing appellant's petition for a writ of review without bringing up the record of the contempt proceedings before the Commission and in thus depriving appellant of independent judicial review on constitutional factual issues relating to procedural due process, in itself deprived appellant of its property without due process of law in violation of the fourteenth amendment to the federal constitution.

(2) Whether, in any event, the absence of the Commission's record in the record before the Supreme Court of California, rendered an appeal from such decision to the United States Supreme Court an inadequate remedy to secure judicial review on the issues of procedural due process, so that the federal district court's action in summarily dismissing appellant's complaint and application for injunctive relief without reviewing such issues on the basis of the Commission's record was an abuse of equitable discretion.

(3) Can a state statute, consistent with the due process requirements of the fourteenth amendment to the federal

constitution, authorize a state administrative agency to exercise judicial power to adjudge a party guilty of criminal contempt, and impose substantial criminal penalties pursuant to such conviction?

(4) Can a state statute, consistent with the due process requirements of the fourteenth amendment to the Constitution of the United States, authorize a state administrative agency to exercise judicial power to convict a party of criminal contempt and impose substantial and serious criminal penalties, without affording the alleged contemner an opportunity for a trial by jury?

STATEMENT OF THE CASE

The pertinent facts, as alleged in the complaint before the district court, may be summarized as follows:

Appellant, a common carrier by railroad, owns 17 individual parking lots adjacent to its railroad stations on the San Francisco Peninsula at and between San Francisco and San Jose, California, which are so located as to be suitable for use as vehicular parking areas for the use of appellant's patrons in connection with commuter service provided by appellant between those points. These lots have an aggregate fair market value in excess of $3,500,000 and ad valorem taxes accrue on said properties in the amount of $86,539 per annum, or aproximately $1,625 per week. With the exception of the parking areas located at Sunnyvale, Mountain View and San Carlos, the Commission had not purported to assert jurisdiction over appellant's parking areas and operations prior to October 10, 1967.

In order to provide modern and convenient parking facilities for the use of its patrons, and others, appellant began, in September of 1967, a comprehensive program to improve all of its Peninsula parking areas. To recover for the cost of improving and operating said areas, and the

taxes applicable thereto, parking fees were charged. By October 10, 1967, appellant had already expended sums in excess of $50,000 pursuant to its improvement program, and was charging parking fees at its Peninsula parking areas of San Jose, Sunnyvale, San Mateo, Santa Clara, Hillsdale, Menlo Park and Palo Alto, at which locations all improvements had been completed. Appellant anticipated that improvements would be completed and the charging of parking fees would be commenced at the remainder of its Peninsula parking areas by October 20, 1967.

By a purported "temporary restraining order" issued October 10, 1967, the Commission ordered appellant to refrain indefinitely from charging parking fees at its Peninsula parking areas. The Commission's action was in response to the single complaint filed with it by the City of San Carlos, conplaining only of the proposed future imposition of parking fees in the City of San Carlos. The basis of the Commission's action as to the other 16 locations was anonymous, unverified allegations and memoranda in the Commission's confidential files, which information has at all times been unavailable to appellant. The injunction was issued *ex parte,* without notice, without hearing, and was of indefinite duration. The effect of this order was to require appellant to throw open to the general public all of its Peninsula parking areas for free public parking.

Appellant believed in good faith that the purported injunction was absolutely void under California law,[2] and unsuccessfully sought a writ of prohibition from the Cali-

2. Under California statutes, all mandatory orders of the Commission must be supported by evidence taken at Commission hearings (California Public Utilities Code §§ 1704-1706); when ex parte restraining orders are desired in advance of hearings, they are issued at the request of the Commission by a court of general jurisdiction in the county affected pursuant to specific provisions of the Public Utilities Code (California Public Utilities Code §§ 2102 and 2103).

fornia Supreme Court. Nevertheless, appellant complied with the temporary restraining order insofar as it prohibited appellant from extending its pay parking system to the balance of Peninsula parking areas. Appellant also continued collection of parking fees at those areas where pay parking had been instituted prior to the Commission's order of October 10, 1967. Appellant's failure wholly to comply with the order resulting in the institution of a criminal contempt proceeding by the Commission, at which appellant was ordered to show cause why it should not be held in contempt of the Commission's order of October 10, 1967. The show cause order dated November 15, 1967, was issued in response to the public accusation of Commissioner William M. Bennett that appellant was guilty of contempt, which accusation was made before any evidence of the alleged contempt was of record.

Commissioner Bennett was assigned by the Commission to preside at the contempt hearing, notwithstanding the fact he had previously prejudged the issue against appellant and had publicly stated that appellant was in fact guilty of contempt. During the course of the criminal contempt proceeding, Commissioner Bennett participated as both prosecutor and presiding officer. Thereafter, he actively participated in the deliberations of the Commission, which culminated in the Commission's order of April 16, 1968 (Appendix A) finding appellant guilty of criminal contempt and assessing a fine of $22,000, the maximum fine permissible for the number of counts contained in the show-cause order. On the same day the Commission in another order acknowledged appellant's right to charge for parking at all of its involved stations pendente lite, and authorized the collection of a charge set on an interim basis at 25 cents per day.

Appellant has contended that the following aspects of the Commission's contempt proceedings deprived it of its constitutional right to a fair hearing under the due process clause:

The bias of Commissioner Bennett: In this connection appellant filed two motions with the Commission seeking to have Commissioner Bennett disqualified for bias, a statutory affidavit of prejudice and a motion for disqualification for cause, both of which were denied by the Commission. (Affidavit of John MacDonald Smith, counsel for appellant in the contempt proceedings, Document D-4 in the record on appeal, pp. 7-8). The first was based on the following statement made to appellant's counsel by Commissioner Bennett on November 6, 1967, prior to the show-cause order of November 15, 1967, on the record in related proceedings before the Commission involving the permissible amount of parking fees, upon being apprised of the fact that appellant had not discontinued its parking charges pending the seeking of a writ of prohibition from the Supreme Court of California:

> "Well, so far as I am concerned I would recommend to the full Commission that we find the Southern Pacific in full contempt, but we will take that up with the Commission tomorrow." (D-4, pp. 6-7)

The second motion referred to certain extra judicial statements made by Commissioner Bennett, including newspaper reports of his public ridicule of another member of the Commission who had declined to sign the order to show cause (D-4, p. 8, Appendix E thereto).

Action of Commissioner Bennett as both prosecutor and hearing officer in the contempt proceedings: As indicated in Document D-4, pp. 8-11: After counsel for the Commission had rested his case in the contempt proceedings, Com-

missioner Bennett asked counsel for appellant to produce appellant's president at the hearings. Appellant's counsel declined to do so on the ground that the order to show cause was directed only against appellant and not its officers. Thereupon Commissioner Bennett directed counsel for the Commission to obtain a subpoena from the Commission's secretary to bring appellant's president before him. This was done over appellant's objections. When appellant's president appeared at the hearing, counsel for the Commission indicated that the Commission's staff had no questions to submit to him. Commissioner Bennett then directed the Commission's counsel to develop on the record as a public attorney in this proceeding the connection of appellant's president with this "seeming violation of the Commission's order." After a few questions of appellant's president by counsel for the Commission, Commissioner Bennett took over the interrogation, an interrogation which ranged far afield from the issue of alleged contempt, and covered advertising of passenger trains, why appellant sought to disqualify him from presiding, and whether appellant played any part in the screening or selection of potential public utility commissioners.

Denial to appellant of right to confront its accusers, to introduce evidence, to cross-examine its accusers and to know the basis on which the Commission acted in issuing the ex parte restraining order. Basically, this involved a denial to appellant of the right to prove its defense to the restraining order at the contempt hearing. At this hearing it developed that, except for a single complaint pertaining to appellant's lot at San Carlos, the basis of the Commission's restraining order was miscellaneous information such as telephone calls, and reports of Commission employees; that such information was either unrecorded or in some

confidential Commission file which was not available to the public or appellant for inspection.[3]

Appellant raised each of the above contentions having to do with procedural due process in its petition for a writ of review of the contempt order to the Supreme Court of California. Without bringing up the Commission's record in these contempt proceedings so that it could provide an independent review of the underlying facts alleged, the California Supreme Court, summarily, without opinion, denied the petition in its order of September 25, 1968 (Appendix C). It is settled that such summary denial of review without opinion is, nevertheless, a decision on the merits both as to the law and facts presented in the review proceedings. *People v. Western Air Lines, Inc.*, 42 Cal. 2d 621, 630-31; 268 P. 2d 723 (1954). Appellant in No. 1050 has, of course, taken an appeal to this court from the above decision of the California Supreme Court, but the Commission's record, in view of the summary denial of the petition, is not before this court in the record on that appeal, and the appeal was limited to the question of the constitutionality of statutes giving the Commission power to punish for contempt and without a jury. As previously indicated, before taking an appeal to this court, appellant raised in its complaint in the instant proceedings before the district court (D-1), these same issues of procedural due process and also the contentions that the statutory giving of the Commission power to punish for contempt and without a jury trial violated substantive due process. Again appellant's suit was summarily dismissed without opinion on a motion to dismiss and without the taking of

3. The detailed allegations of fact on this contention appear in appellant's petition for a writ of review to the Supreme Court of California, to review the contempt order which is in the record before this court in No. 1050 (pp. 11-12, 31-35).

any evidence or bringing up the record before the Commission for the court's review. We do not know the exact reason for such action but presume the court concluded that appellant had an adequate legal remedy with respect to securing judicial review of the facts and law pertaining to these issues of procedural due process by taking an appeal to this court from the order of the California Supreme Court denying the writ of review. Whatever the reasons, the fact remains that the district court's action effectively deprived appellant of independent judicial review of the Commission's record dealing with the facts concerning appellant's charges of deprivation of procedural due process in violation of the federal constitution.

THE QUESTIONS ARE SUBSTANTIAL

I. The Failure of the Supreme Court of California to Provide an Independent Judicial Review of the Truth of Appellant's Factual Allegations Concerning Deprivation of Procedural Due Process Itself Deprived Appellant of Due Process.

Each of the aforementioned three allegations concerning procedural due process made to the California Supreme Court by appellant in the petition for a writ of review, if proven, would have constituted a denial of due process.[4]

Certainly the failure of the California Supreme Court to bring up the Commission's record so that it could review

4. *Air Transp. Ass'n of America v. Hernandez* (D.C., D.Col., 1967) 264 F. Supp. 227, 231-32; *NRLB v. Phelps,* (C.A. 5, 1943) 136 F. 2d 562, 563-64; *Texaco, Inc. v. Federal Trade Com'n,* (C.A., D.Col. 1964) 336 F. 2d 754; *Amos Treat & Co. v. Securities & Exchange Com'n* (C.A., D.Col., 1962) 306 F. 2d 260; *In re Murchison,* 349 U.S. 133 (1955); *NRLB v. Washington Dehydrated Food Co.,* (C.A. 9, 1941) 118 F. 2d 980, 996; *Interstate Com. Comm'n v. Louisville & N.R.R.,* 227 U.S. 88 (1913); *Illinois Cent. R.R. v. Railroad Comm'n of Kentucky,* (D.C., E.D. Ky. 1924) 1 F. 2d 805; *Ohio Bell Tel. Co. v. Public Utilities Comm'n of Ohio,* 301 U.S. 292 (1937); and *Pointer v. Texas,* 380 U.S. 400 (1965).

the truth of these allegations violates section 1760, California Public Utilities Code, *supra*, p. 5, which states:

> "In any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the Constitution of the United States, the Supreme Court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the constitutional question shall not be final."

We submit further, however, that such failure under the so-called "constitutional fact" doctrine deprived appellant of the due process. That doctrine, broadly speaking, is to the effect that where an administrative agency has made a determination on factual matters relating to basic constitutional rights, the party affected is entitled, as a matter of due process of law, to an independent judicial weighing of the truth of such facts. This doctrine was first enunciated with respect to the fact of confiscation in cases involving the quasi-legislative function of utility ratemaking. *Ohio Valley Co. v. Ben Avon Borough*, 253 U.S. 287, 289 (1920); *St. Joseph Stock Yards Co. v. U.S.*, 298 U.S. 38 (1936). In the following excerpt from its decision in the latter case this Court indicated the reasons for the doctrine and that it was one of general application and not limited to quasi-legislative determination, thus (p. 52):

> "Legislative agencies, with varying qualifications, work in a field peculiarly exposed to political demands. Some may be expert and impartial, others subservient. It is not difficult for them to observe the requirements of law in giving a hearing and receiving evidence. But to say that their findings of fact may be made conclusive where constitutional rights of liberty and property are involved, although the evidence clearly establishes that the findings are wrong and constitutional

rights have been invaded, is to place those rights at the mercy of administrative officials and seriously to impair the security inherent in our judicial safeguards. That prospect, with our multiplication of administrative agencies, is not one to be lightly regarded. It is said that we can retain judicial authority to examine the weight of evidence when the question concerns the right of personal liberty. But if this be so, it is not because we are privileged to perform our judicial duty in that case and for reasons of convenience to disregard it in others. The principle applies when rights either of person or of property are protected by constitutional restrictions. Under our system there is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits of constitutional authority.This is the purport of the decisions above cited with respect to the exercise of an independent judicial judgment upon the facts where confiscation is alleged."

The reasons for application of the doctrine would appear to be even more cogent in connection with quasi-judicial proceedings such as the present, and it has been extended to that area. *Ng Fung Ho v. White,* 259 U.S. 276 (1922); *Crowell v. Benson,* 285 U.S. 22 (1932). Closely related are a number of decisions under the Railway Labor Act which hold that an employee whose claim has been denied by an adjustment board is entitled to independent judicial review on matters of procedural due process, even though that Act generally precludes judicial review. *Hornsby v. Dobard,* (C.A. 5, 1961) 291 F. 2d 483, 487); *Ellerd v. Southern Pacific Co.,* (C.A. 7, 1957) 241 F. 2d 541, 545; *Sigfred v. Pan American World Airways,* (C.A. 5, 1950), 230 F. 2d 13, 17; *Edwards v. Capital Airlines,* (C.A. D.Col. 1949) 176 F. 2d 755, 760, *cert. denied,* 338 U.S. 885 (1949); *Bower v. Eastern Airlines* (C.A. 3, 1954), 214 F. 2d 623, 626, *cert.*

denied, 348 U.S. 871 (1954); *Union Pacific R. Co. v. Price,* 360 U.S. 601, 616 (1959). In *Hornsby v. Dobard, supra,* the court said, at page 487:

> "This does not, of course, decide the question as to whether the Board's decision may be subject to review or collateral attack because of procedural or other defects amounting to the absence of due process of law. If in the administrative procedures there has been a denial of due process, there is a right to a judicial review of the administrative decision."
>
> * * *
>
> "If it is shown that the union representatives on the Board have such personal interests arising out of their union memberships or employment, or from the agreement between the union and the carrier as would justify an inference of bias or partiality by reason of interest, then the right to a judicial review will not be denied."

II. In Any Event the Availability of Appeal to This Court from the Decision of the California Supreme Court Was Not an Adequate Remedy with Respect to Factual Matters Relating to the Charges of Deprivation of Procedural Due Process So That the District Court's Failure to Review the Truth of These Charges Was an Abuse of Discretion.

Since the California Supreme Court did not bring up for review the Commission's record concerning factual matters relating to these procedural due process issues, the Commission's record is not part of the record which this court can review in reviewing the decision of the California Supreme Court on appeal. Accordingly, we submit that the availability of an appeal to this court was not an adequate legal remedy to secure the required independent judicial review of these factual matters, as the district court apparently thought, and the district court consequently abused its equitable discretion in refusing to review the record of

the Commission's proceedings on these charges to ascertain whether they were true.

III. & IV. California Statutes Giving the Commission Power to Punish for Contempt Violate the Due Process Clause of the Fourteenth Amendment, and This Is Especially True in View of the Absence of Jury Trial.

These same issues are raised in the pending appeal to this Court from the decision of the California Supreme Court in No. 1050. The substantiality of these two questions is pointed out at pages 5-8 of appellant's jurisdictional statement in that case, and will not be repeated here.

CONCLUSION

For the foregoing reasons the Court should note jurisdiction of this appeal and set the substaantial federal constitutional issues raised for formal argument.

Respectfully submitted,

ROBERT L. PIERCE
JOHN MACDONALD SMITH
ROBERT S. BOGASON

By ROBERT L. PIERCE

Counsel for Appellant Southern Pacific Company

CERTIFICATE OF SERVICE

I, ROBERT L. PIERCE, one of the attorneys for SOUTHERN PACIFIC COMPANY, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify, pursuant to Rule 33(3)(b) of the Revised Rules of the Supreme Court of the United States, that on the 12th day of March, 1969, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States as follows:

On all counsel of record for the CALIFORNIA PUBLIC UTILITIES COMMISSION, PETER E. MITCHELL, WILLIAM M. BENNETT, A. W. GATOV, WILLIAM SYMONS, JR., and FRED P. MORRISSEY, as members of, and constituting said Commission, at the offices of the COMMISSION, California State Building, San Francisco, California 94102; THOMAS C. LYNCH, at Fifth Street and Capitol Mall, Sacramento, California; JOHN J. FERDON, at 850 Bryant Street, San Francisco, California; KEITH C. SORENSON, at Hall of Justice and Records, Redwood City, California; and LOUIS P. BERGNA, at 190 W. Hedding, San Jose, California, by mailing a copy, in a duly addressed envelope, first class, postage prepaid, to each such party.

Dated at San Francisco, California, this 12th day of March, 1969.

ROBERT L. PIERCE

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San Francisco, Calif. 94105

(Appendices Follow)

Appendix A

Decision No. 74006

Before the Public Utilities Commission of the State of California

City of San Carlos, a Municipal corporation, *Complainant,* vs. Southern Pacific Company, a corporation, *Defendant.*	Case No. 8697 (Filed October 10, 1967)
Investigation on the Commission's own motion into the Rates, Charges, Rules, Operations, Practices, Contracts, Leases, Service and Facilities of all the vehicular parking areas adjacent to railroad stations between San Francisco and San Jose, California, owned or controlled by Southern Pacific Company.	Case No. 8700 (Filed October 10, 1967)

CONTEMPT PROCEEDING

Alan C. Furth and *John MacDonald Smith,* for Southern Pacific Company, respondent.

Richard D. Gravelle, Counsel for the Commission staff.

OPINION

On November 15, 1967, the Commission issued an order requiring Southern Pacific Company to appear and show cause, if any it had, why it should not be adjudged to be in contempt of the Commission for failing to comply with

certain provisions of a Commission order dated October 10, 1967, as amended by Decision No. 73251 dated October 24, 1967.

Public hearing on the Order to Show Cause was held on November 30, 1967 and December 21, 1967, at San Francisco, with the matter being submitted on the latter date.

The record indicates that by its order dated October 10, 1967, the Commission instituted an investigation into the operations of all vehicular parking areas adjacent to the railroad stations between San Francisco and San Jose, California, owned or controlled by Southern Pacific Company to determine the reasonableness of parking charges recently imposed or about to be imposed by Southern Pacific Company. Pending such investigation the order restrained Southern Pacific Company from charging or collecting parking tolls at any of its parking areas, adjacent to its tracks, between San Francisco and San Jose. By Decision No. 73251, dated October 24, 1967, following oral argument, the restraining order was modified by excluding therefrom the parking areas located at San Francisco and Mountain View; however, Southern Pacific Company was ordered to charge no more than 25 cents at the Mountain View lot. Decision No. 73251 also required respondent to remove or cover all rental signs and rental equipment from the parking areas made subject to the restraining order as amended.

The order of October 10, 1967, was served upon respondent by registered mail on October 12, 1967, and became effective on November 1, 1967. A copy of Decision No. 73251 was served upon respondent by registered mail on October 27, 1967, and the order became effective on October 30, 1967.

An affidavit in support of the Order to Show Cause was prepared by an employee of the Commission and was introduced as a part of Exhibit C-1. It was his testimony that he visited the parking areas herein considered on November 2, 3, 6, 7 and 8, 1967, and personally observed 44 separate and distinct violations of the Commission's restraining order, as amended. The witness testified that he personally purchased parking lot tickets and observed others purchasing tickets at the various lots. He further testified that respondent had failed to cover the rental signs and rental equipment at said parking areas. The witness also testified that he observed individuals paying 35 cents for parking lot tickets at the Mountain View area.

Respondent made no affirmative showing, but its President appeared pursuant to a subpoena and testified that upon being advised by counsel that the Commission's restraining order was invalid he personally made the decision on behalf of respondent not to comply with said order and that respondent continued its program of collecting parking fees notwithstanding the Commission's order to the contrary.

The record further indicates that the State Supreme Court of the State of California took the following course of action with respect to petitions and an application filed by respondent as a result of the Commission's restraining order:

(1) November 8, 1967, denied respondent's petition for a writ of prohibition.
(2) November 29, 1967, denied respondent's petition for a writ of prohibition and application for a stay of the Commission's restraining order.
(3) December 20, 1967, denied respondent's petition for a writ of review of the Commission's restraining order.

Findings

The Commission finds as follows:

1. Southern Pacific Company is a public utility "railroad corporation" within the meaning of Section 230 of the Public Utilities Code and subject to the jurisdiction of this Commission.

2. On October 10, 1967, this Commission issued an order restraining Southern Pacific Company from charging or collecting parking tolls at any of its parking areas adjacent to its tracks between San Francisco and San Jose pending further order of the Commission. A copy of said order was served upon Southern Pacific Company by registered mail on October 12, 1967, and became effective on November 1, 1967.

3. By Decision No. 73251, dated October 24, 1967, the Commission amended its order of October 10, 1967 and deleted therefrom the parking areas located at San Francisco and Mountain View, and in addition limited the parking charge at Mountain View to 25 cents. Said decision also required Southern Pacific Company to remove or cover all rental signs and rental equipment. A copy of Decision No. 73251 was served upon Southern Pacific Company by registered mail on October 27, 1967, and the order became effective on October 30, 1967.

4. On November 2, 3, 6, 7 and 8, 1967, an employee of the Commission visited the parking areas covered by the Commission's restraining order and personally observed 44 separate instances wherein Southern Pacific Company had failed to comply with the Commission's restraining order dated October 10, 1967, as amended by Decision No. 73251.

5. On November 15, 1967, the Commission by Decision No. 73352 issued an order requiring Southern Pacific Company to appear before Commissioner Bennett or Examiner

Daly on November 30, 1967, at the Commission's Courtroom in San Francisco and then and there show cause, if any it had, why it should not be adjudged to be in contempt of this Commission and punished therefor in the manner prescribed by law for the 44 separate and distinct offenses of alleged contempt set forth in the affidavit attached to the Order to Show Cause. A copy of said Order to Show Cause and copies of documents in support thereof were personally served upon an officer of Southern Pacific Company on November 15, 1967.

6. During the course of hearing upon the Order to Show Cause the President of Southern Pacific Company admitted that he was fully aware of the restraining order of the Commission, understood the content and nature thereof, but personally decided on behalf of Southern Pacific Company, not to comply with said order and that said company did in fact collect and continue to collect, as of December 21, 1967, parking charges at the parking areas covered by the Commission's restraining order of October 10, 1967, as amended.

7. Southern Pacific Company at all the times mentioned herein did not, and now does not, specify rates and charges in its schedules filed with the Commission and in effect at such times applicable to the parking charges collected by it at the parking areas covered by the Commission's restraining order of October 10, 1967, as amended; nor was Southern Pacific Company during any of such times authorized by the Commission to assess and collect such charges.

8. The restraining order of October 10, 1967, as amended, has been in effect at all times since November 1, 1967.

9. The Supreme Court of the State of California on three separate occasions since November 8, 1967 has denied to Southern Pacific Company writs of prohibition and re-

view and an application for a stay of the Commission's order of October 10, 1967, as amended.

10. Southern Pacific Company willfully, intentionally and flagrantly failed to comply with the Commission's restraining order of October 10, 1967, as amended, on the 44 separate and distinct instances as set forth in the affidavit in support of the Order to Show Cause in Exhibit C-1 of this proceeding.

Conclusions

1. Southern Pacific Company in willfully and intentionally failing to comply with the Commission's restraining order of October 10, 1967, as amended, on the 44 separate and distinct instances referred to in Finding 10 above is in contempt of the Commission.

2. Southern Pacific Company should be fined the sum of $500 for each of such 44 instances, in the total amount of $22,000, in the manner set forth in the following order.

3. Southern Pacific Company should be directed to formulate and file a plan with the Commission to refund all moneys collected by it as parking charges at the parking areas here involved from November 2, 1967 to the effective date of this order.

A recommended decision was presented to the Commission by Commissioner Bennett. Some revisions were made therein by the Commission, including an additional finding, conclusion and ordering paragraphs. In order that such recommended decision may be available to the parties, a copy thereof is attached hereto (Attachment "A").

ORDER

It is ordered that:

1. Southern Pacific Company is hereby adjudged to be in contempt of the Commission's restraining order dated October 10, 1967, as amended by Decision No. 73251 for

failing to comply therewith on the 44 separate and distinct occasions as set forth in the affidavit in support of the Order to Show Cause as evidenced by Exhibit C-1 in this proceeding.

2. Southern Pacific Company, within ten days of the effective date hereof, shall formulate and file with the Commission a plan whereby it will refund parking charges to those persons from whom Southern Pacific Company, without authority from the Commission, collected them in connection with the parking areas named in the order of October 10, 1967, as amended. Such plan shall provide, among other things, that claimants for refunds shall have a period of ninety days, from May 7, 1968, the date upon which Southern Pacific Company shall cause to be published and posted a "Notice of Refund" in an appropriate place, to establish and file their claims.

3. Southern Pacific Company shall pay to the Commission a fine in the amount of $22,000. Such sums as Southern Pacific Company shall pay out, pursuant to a plan referred to in paragraph 2 hereof and which plan will have been approved by the Commission, shall be credited against said fine. The entire amount of the fine remaining unpaid shall in any event be paid within ten days after the expiration of the ninety day period hereinabove mentioned.

The Secretary of the Commission shall cause a copy of this order to be personally served upon Southern Pacific Company and the effective date of this order shall be twenty days after such service.

Dated at San Francisco, California, this 16th day of April, 1968.

PETER E. MITCHELL
President
WILLIAM SYMONS, JR.
FRED P. MORRISSEY
Commissioners

Attachment "A"

Decision No. .....

Before the Public Utilities Commission of the State of California

City of San Carlos, a Municipal corporation, *Complainant,* vs. Southern Pacific Company, a corporation, *Defendant.*	Case No. 8697 (Filed October 10, 1967)
Investigation on the Commission's own motion into the Rates, Charges, Rules, Operations, Practices, Contracts, Leases, Service and Facilities of all the vehicular parking areas adjacent to railroad stations between San Francisco and San Jose, California, owned or controlled by Southern Pacific Company.	Case No. 8700 (Filed October 10, 1967)

CONTEMPT PROCEEDING

Alan C. Furth and *John MacDonald Smith,* for Southern Pacific Company, respondent.

Richard D. Gravelle, Counsel for the Commission staff.

OPINION

On November 15, 1967, the Commission issued an order requiring Southern Pacific Company to appear and show cause, if any it had, why it should not be adjudged to be in contempt of the Commission for failing to comply with certain provisions of a Commission order dated October

10, 1967, as amended by Decision No. 73251 dated October 24, 1967.

Public hearing on the Order to Show Cause was held before Commissioner Bennett and Examiner Daly on November 30, 1967 and December 21, 1967, at San Francisco, with the matter being submitted on the latter date.

The record indicates that by its order dated October 10, 1967, the Commission instituted an investigation into the operations of all vehicular parking areas adjacent to the railroad stations between San Francisco and San Jose, California, owned or controlled by Southern Pacific Company to determine the reasonableness of parking charges recently imposed or about to be imposed by Southern Pacific Company. Pending such investigation the order restrained Southern Pacific Company from charging or collecting parking tolls at any of its parking areas, adjacent to its tracks, between San Francisco and San Jose. By Decision No. 73251, dated October 24, 1967, following oral argument, the restraining order was modified by excluding therefrom the parking areas located at San Francisco and Mountain View; however, Southern Pacific Company was ordered to charge no more than 25 cents at the Mountain View lot. Decision No. 73251 also required respondent to remove or cover all rental signs and rental equipment from the parking areas made subject to the restraining order as amended.

The order of October 10, 1967, was served upon respondent by registered mail on October 12, 1967, and became effective on November 1, 1967. A copy of Decision No. 73251 was served upon respondent by registered mail on October 27, 1967, and the order became effective on October 30, 1967.

An affidavit in support of the Order to Show Cause was prepared by an employee of the Commission and was intro-

duced as a part of Exhibit C-1. It was his testimony that he visited the parking areas herein considered on November 2, 3, 6, 7 and 8, 1967, and personally observed 44 separate and distinct violations of the Commission's restraining order, as amended. The witness testified that he personally purchased parking lot tickets and observed others purchasing tickets at the various lots. He further testified that respondent had failed to cover the rental signs and rental equipment at said parking areas. The witness also testified that he observed individuals paying 35 cents for parking lot tickets at the Mountain View area.

Respondent made no affirmative showing, but its President appeared pursuant to a subpoena and testified that upon being advised by counsel that the Commission's restraining order was invalid he personally made the decision on behalf of respondent not to comply with said order and that respondent continued its program of collecting parking fees notwithstanding the Commission's order to the contrary.

The record further indicates that the State Supreme Court of the State of California took the following course of action with respect to petitions and an application filed by respondent as a result of the Commission's restraining order:

(1) November 8, 1967, denied respondent's petition for a writ of prohibition.

(2) November 29, 1967, denied respondent's petition for a writ of prohibition and application for a stay of the Commission's restraining order.

(3) December 20, 1967, denied respondent's petition for a writ of review of the Commission's restraining order.

Findings

After consideration the Commission finds as follows:

1. Southern Pacific Company is a public utility "railroad corporation" within the meaning of Section 230 of the Public Utilities Code and subject to the jurisdiction of this Commission.

2. On October 10, 1967, this Commission issued an order restraining Southern Pacific Company from charging or collecting parking tolls at any of its parking areas adjacent to its tracks between San Francisco and San Jose pending further order of the Commission. A copy of said order was served upon Southern Pacific Company by registered mail on October 12, 1967, and became effective on November 1, 1967.

3. By Decision No. 73251, dated October 24, 1967, the Commission amended its order of October 10, 1967 and deleted therefrom the parking areas located at San Francisco and Mountain View, and in addition limited the parking charge at Mountain View to 25 cents. Said decision also required Southern Pacific Company to remove or cover all rental signs and rental equipment. A copy of Decision No. 73251 was served upon Southern Pacific Company by registered mail on October 27, 1967, and the order became effective on October 30, 1967.

4. On November 2, 3, 6, 7 and 8, 1967, an employee of the Commission visited the parking areas covered by the Commission's restraining order and personally observed 44 separate instances wherein Southern Pacific Company had failed to comply with the Commission's restraining order dated October 10, 1967, as amended by Decision No. 73251.

5. On November 15, 1967, the Commission by Decision No. 73352 issued an order requiring Southern Pacific Com-

pany to appear before Commissioner Bennett or Examiner Daly on November 30, 1967, at the Commission's Courtroom in San Francisco and then and there show cause, if any it had, why it should not be adjudged to be in contempt of this Commission and punished therefor in the manner prescribed by law for the 44 separate and distinct offenses of alleged contempt set forth in the affidavit attached to the Order to Show Cause. A copy of said Order to Show Cause and copies of documents in support thereof were personally served upon an officer of Southern Pacific Company on November 15, 1967.

6. During the course of hearing upon the Order to Show Cause the President of Southern Pacific Company admitted that he was fully aware of the restraining order of the Commission, understood the content and nature thereof, but personally decided on behalf of Southern Pacific Company, not to comply with said order and that said company did in fact collect and continue to collect, as of December 21, 1967, parking charges at the parking areas covered by the Commission's restraining order of October 10, 1967, as amended.

7. The restraining order of October 10, 1967, as amended, has been in effect at all times since November 1, 1967.

8. The Supreme Court of the State of California on three separate occasions since November 8, 1967 has denied to Southern Pacific Company writs of prohibition and review and an application for a stay of the Commission's order of October 10, 1967, as amended.

Conclusion

Southern Pacific Company willfully, intentionally and flagrantly failed to comply with the Commission's restrain-

ing order of October 10, 1967, as amended, on the 44 separate and distinct instances as set forth in the affidavit in support of the Order to Show Cause in Exhibit C-1 of this proceeding.

During the course of hearing Southern Pacific Company filed a petition to disqualify Commissioner Bennett. The Commission denied the petition, but the denial will be affirmed in the ensuing order.

ORDER

It is ordered that:

1. Southern Pacific Company is hereby adjudged to be in contempt of the Commission's restraining order dated October 10, 1967, as amended by Decision No. 73251 for failing to comply therewith on the 44 separate and distinct occasions as set forth in the affidavit in support of the Order to Show Cause as evidenced by Exhibit C-1 in this proceeding and within ten days after the effective date of this order shall pay to this Commission a fine in the amount of twenty-two thousand dollars ($22,000).

2. The petition of Southern Pacific Company to disqualify Commissioner William M. Bennett is hereby denied.

The Secretary of the Commission shall cause a copy of this order to be personally served upon Southern Pacific Company and the effective date of this order shall be twenty days after such service.

Dated at ....., California, this ..... day of ....., 1968.

Commissioner Gatov Dissenting:

It is my opinon that Southern Pacific Company wilfully and intentionally failed to comply with the Commission's Restraining Order of October 10, 1967 (as amended) on

forty-four separate and distinct instances, and is in contempt of the Commission.

Further, it is my opinion that Southern Pacific Company should be fined in the sum of $500.00 for each of the forty-four instances, or a total amount of $22,000.00.

I do not concur in the order of the majority of the Commission in this case.

/s/ A. W. Gatov
Commissioner

Dated: San Francisco, California,
April 16, 1968

William M. Bennett, Commissioner, Dissenting Opinion

This case had its genesis in proceedings before this Commission concerned with establishing a reasonable fee applicable to Peninsula parking lots owned and operated by the Southern Pacific Company. On November 6, 1967, counsel for Southern Pacific in public hearing before this Commission in Case 8697 was candid in stating on the record that the Southern Pacific Company would not comply with a restraining order previously issued by this Commission on October 10, 1967, and signed by Commissioners Mitchell, Gatov and Symons. Southern Pacific took the position at that time and even during the proceedings herein that the restraining order of the Commission was invalid. Even repeated refusals by the Supreme Court of the State of California to nullify such order was disregarded by the Southern Pacific.

The refusal of the Southern Pacific Company was so notorious that undoubtedly this explains the failure of that company to present any testimony whatsoever by way of a defense to the proceedings initiated or by way of mitigation for its contemptuous action. Southern Pacific conducted

itself with an air of certainty almost as though it had suddenly become immune to the jurisdiction and process of this Commission.

But for the candor of Southern Pacific counsel in freely admitting to violation of the Commission's orders, this matter would not have come to the Commission. It is most curious, perplexing and beyond explanation that neither the staff of this Commission, the Director of Transportation nor the Chief Counsel brought to our attention the disregard by Southern Pacific of a Commission order. Only the frankness of Southern Pacific counsel in the public proceedings apprised us that a lawful order of the Commission was being disobeyed. This is hardly in keeping with the concept of a vigorous, independent staff acting in the public interest. And it is so unlike staff action of recent years when it did exhibit initiative, independence and simply performed statutory duty. We can well ask why staff personnel knowing of Southern Pacific's disregard for a Commission order chose to remain silent. I think it correct to state that but for the information supplied by Southern Pacific counsel as to the railroad's disregard for a lawful order that there never would have been knowledge of contempt let alone proceedings to impose punishment for contempt.

That the Southern Pacific Company considers itself beyond the reach of this Commission and the Supreme Court of this state is plain. It makes its own determination as to that which is binding upon it and obeys or disobeys accordingly.

The interests of its commuters, the authority of this Commission, the public service obligations of this corporation, all are seemingly of little or no concern to the management of Southern Pacific Company. This corporation should realize as should all other California public utilities

that if regulation is to be ignored, if a permissive regulatory climate is to inhibit the vigor of this Commission, then the public will not be served or protected by this Commission, and the raison d'etre for its being will be gone. And when the public realization becomes widespread and if the historical process repeats itself then the only answer toward control of a public service corporation as here lies in public ownership. And shortsighted management enraptured with profit and indifferent to public need can only hasten that day.

The convenient story of the President of Southern Pacific that he believed counsel's advice that the restraining order was not valid discloses a woeful inadequacy upon the part of Southern Pacific counsel and Southern Pacific management. Obviously this was the testimony that had to be given. Merely giving it does not make it credible. Southern Pacific was here testing the Commission and almost got away with it. The difficulty was however that the contempt was so open and flagrant that it could not be disregarded. The distressing thing here is the spectacle of management totally callous toward public responsibilities and indifferent to the obligations of law.

Some comments are in order. The order of my brethren ruling upon my qualifications is irrelevant, unnecessary and beyond their power. As a Commissioner I take my authority from the constitution—not from my colleagues. Further, I had thought that the California Supreme Court had clearly determined this matter when they denied the efforts of the Southern Pacific Company to disqualify me from the case.

Concerning the parking lot decision the majority embarks upon a most curious discussion concerning the tax liability of California railroads. The record is quite clear that

Southern Pacific has a tax expense associated with each parking lot which is the subject of today's order. Heretofore the Commission has always recognized that a public utility whether it be a railroad corporation or other is entitled in the rate fixing process to compensation for taxes paid. And further in the parking lot decision in this Commission dated June 20, 1967, Decision No. 72615 the majority which is now reversing itself found specifically that SP is entitled to recoup *taxes*, assessments, improvements and maintenance of parking lots. Not only is the Commission disregarding its recently enunciated parking lot order but it is disregarding all of the regulatory concepts which heretofore have been considered well established, as part of the rate fixing process of this Commission. We are prompted to wonder why. Today's order insofar as it relates to the parking lots merely sets aside the decision of an impartial examiner who heard the fresh testimony and who judged the credibility of witnesses and the majority arbitrarily rewrites the decision. In seeking to reach some unformulated goal or objective the majority of necessity does violence to basic regulatory principles and law. Does the majority actually hold by this decision that there is question as to whether taxes are an operating expense in a rate proceeding? So far as the staff position is concerned there is no evidence whatsoever from the staff rebutting in any wise the hard fact that Southern Pacific has a tax liability upon each parking lot.

Turning to the contempt proceeding the Commission has mixed two cases terribly. There is nothing whatsoever even by employment of the single word "refund"—about refunds in the contempt case. The opinion in the contempt case which is judicial in nature is supposed to be based upon the order to show cause, the allegations of contempt associ-

ated therewith and only the evidence pertaining to these matters adduced at public hearing. There is nothing in the contempt proceedings about refunds and therefore it is improper for the Commission to be mixing parking charges, refunds, and a punitive fine in one composite order. The staff has advised us that the contempt order is erroneous in presenting for the first time and in the ultimate majority decision discussion of refunds.

There is, however, a sly benefit to the Southern Pacific by the intrusion of the irrelevancy of refunds. Southern Pacific well knows that refunds are not part of a contempt order. And all today's majority order does is to defer and to place in doubt a specific fine of $22,000. Southern Pacific is required to set up some type of plan detailing the manner in which it shall refund parking charges. And the logical question arises at this point whether or not Southern Pacific is to base a refund plan upon Examiner Daly's original decision which provides for a 35 cent daily parking charge or whether the refund plan is to be based upon the majority's tentative daily charge of 25 cents. Standing plain in all of this is the fact that the 25 cent daily charge of the majority is not final in that the majority parking lot decision sets the matter down for further testimony to decide the tax issue and upon resolution of that issue conceivably the parking lot charge will, unless we abandon all past regulatory precedent, revert to the 35 cent charge which includes taxes as proposed by the examiner herein originally.

There is nothing in the majority order which covers the period of refunds by way of termination and all today's majority orders do is to defer any real decision either on parking lot charges or by way of imposing a $22,000 fine now for perhaps the most flagrant contempt ever visited

upon this body. Further, the confusion contained in today's contempt order whether deliberate and calculated by way of deliberate error to constitute reversal error on an appeal or whether coming from lack of expertise in the regulatory field has the same end result. And that end result is that nothing is being done to Southern Pacific. The Commission has given the Southern Pacific a beautiful error as the basis for rehearing—indeed the majority being placed upon notice of the deliberate error were quick to point out that Southern Pacific could ask for a rehearing.

One wonders whether or not the contempt order as it has been doctored and diluted by the extraneous element of refunds and as it has been rewritten has in fact given the Southern Pacific due process. My brethren do not seem to realize that contempt is a judicial proceeding and because of the penalties involved rights are to be scrupulously observed. The handling of today's orders is unique. Apparently now parties before us are to be treated to the copycat decision. And the Commission at least to its credit advertises the pure results of an impartial examiner and then illustrates its absolute power by arbitrarily assigning a decision to an examiner who never heard a line of testimony and to a commissioner who did not set on even one day's hearing. Southern Pacific is to be congratulated. A friendly Commission can achieve its ends either by an outright bold favor or if they be too much for public consumption then it can write a decision and place in it very carefully and deliberately a finding and a procedure here concerning refunds which constitutes in my opinion the basis of a successful appeal. Better then a friend of the court utilities now are served by friends at the court.

The decisions proposed by Examiner Daly were the ones which should be signed. In short, Southern Pacific should be

ordered to pay and at once a $22,000 fine. Their contempt was notorious, flagrant, self-serving and illustrative of a consistent public be damned attitude. As to the parking lot charges if the Commission does not know that since 1912 we have allowed taxes as an operating expense, they are free to wend their way through that concept and to arrive inevitably at the result contained in the examiner's original report. Southern Pacific today by the gentle treatment accorded them now has a license to be indifferent, arrogant and, if necessary, contemptuous.

/s/ WILLIAM M. BENNETT
Commissioner

Dated: San Francisco, California
April 16, 1968

Appendix B

Mary Moran Pajalich
Roderick B. Cassidy
Timothy B. Treacy
Gordon A. Johnson
Public Utilities Commission
of the State of California
5072 State Building
San Francisco, California 94102
Telephone: (415) 557-0336
Attorneys for Defendants

Original Filed Nov 18 1968

In the United States District Court
for the Northern District of California

No. 50166

Southern Pacific Company, a Delaware Corporation,
Plaintiff,

vs.

Public Utilities Commission of the State of California; Peter E. Mitchell, William M. Bennett, A. W. Gatov, William Symons, Jr., and Fred P. Morrissey, as members of, and constituting said Commission; Thomas C. Lynch; John J. Ferdon; Keith C. Sorenson; and Louis K. Bergna,
Defendants.

ORDER GRANTING MOTION TO DISMISS

The motion for an order to dismiss by defendant Public Utilities Commission of the State of California and the

motion for an order granting a preliminary injunction by plaintiff Southern Pacific Company having come on for hearing this day before a Three-Judge Court, and the Court being fully advised,

It Is Ordered that the motion to dismiss by the defendant Public Utilities Commission of the State of California be granted.

It Is Further Ordered that the motion for a preliminary injunction by plaintiff Southern Pacific Company be denied.

Dated: Nov 14 1968

LLOYD H. BURKE
United States District Judge

O. D. HAMLIN
United States District Judge

ALBERT C. WOLLENBERG
United States District Judge

Appendix C

ORDER DENYING WRIT OF REVIEW

S.F. No. 22610

In the Supreme Court of the State of California

In Bank

Southern Pacific Company

v.

Public Utilities Commission

Petition for writ of review DENIED.

Filed Sep 25 1968 William I. Sullivan, Clerk

By JSR

S.F. Deputy

TRAYNOR

Chief Justice